



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 26, 2005

Mr. Robert E. Hager  
Nichols, Jackson, Dillard, Hager & Smith  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2005-03550

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 222684.

The City of Lancaster (the "city"), which you represent, received two requests from the same requestor for information pertaining to a specified incident. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

---

<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

You contend that the submitted documents are confidential under section 58.007(c) of the Family Code. Upon review, we agree that some of these documents pertain to juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the information we have marked is confidential pursuant to section 58.007(c) of the Family Code. You must withhold this information from disclosure under section 552.101 of the Government Code. You also seek to withhold under section 58.007 an internal affairs investigation concerning an officer's handling of a criminal investigation involving a juvenile suspect. The internal affairs investigation documents, however, are not juvenile law enforcement records and may not be withheld under section 552.101 in conjunction with section 58.007(c).

Section 552.108 of the Government Code provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime....

Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with a pending criminal investigation or prosecution. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

Section 552.108 is not applicable to information that relates to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory

predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution). You do not inform us, and the submitted information does not otherwise indicate, that the internal affairs investigation resulted in any criminal investigations or charges. Thus, we conclude that you have not demonstrated that the internal affairs investigation documents are excepted from disclosure under section 552.108. As you raise no other exceptions to disclosure, these documents must be released to the requestor.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

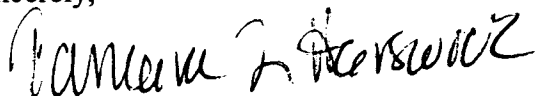
---

<sup>2</sup>We note that the information being released contains information that would be excepted from disclosure to the general public under laws and exceptions designed to protect privacy. However, the requestor has a special right of access to this information. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates solely on grounds that information is considered confidential by privacy principles). If the city receives another request for this information from a person who would not have a special right of access, the city should resubmit this same information and request another decision. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Tamara L. Harswick". The signature is fluid and cursive, with the first name "Tamara" being more prominent than the last name "Harswick".

Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 222684

Enc. Submitted documents

c: Ms. Dorothy Miller  
133 Golden Coast Drive  
Palmer, Texas 75152  
(w/o enclosures)